IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO 4257 of 2005

Rajendra M Chendekar .Petitioner

VERSUS

Union of India & ors.. Respondents

Ms Pritam Tendulkar for S S Karkera for petitioner
Ms V S Masurkar with A M Sethna for UOI

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated l9th Aug.2005

P.C:

. Rule. Respondents waive service. By consent, rule is taken up for final hearing forthwith.

2. This petition takes exception to the orders passed by the Central Administrative Tribunal dated 7.8.2003 and 9.6.2004 in Original Application Nos 527 of 2002 and 393 of 2004 respectively. The facts are that the petitioner while working as Head Mail Peon on 5.6.l999, was arrested by the Directorate of Revenue Intelligence, Mumbai (DRI) at CST Mumbai alongwith one Kishore N Kamble for offence under section l35 of the Customs Act and was detained

in custody till 22.6.l999. The petitioner was placed under suspension with effect from 6.6.l999 in exercise of power conferred by Rule l0(2) of the Central Civil Services(CCA) Rules, l965 on 29.7.l999. The respondents thereafter initiated departmental proceedings under Rule l4 of the CCS(Conduct) Rules, l964 vide Memo dated 30.6.2000 charging the petitioner for the alleged misconduct of failure to maintain absolute integrity in contravention of the provisions of Rule 3(l)(i) of the CCS(Conduct) Rules, l964. The text of the article of charge is reproduced below:

> "That the said Shri R M Chendekar Head Mail Peon, ASPO(Inland), Mumbai 99 though arrested by Police and kept in custody from 6.6.l999 to l7.6.l999, he alleged to have failed to inform this fact to his immediate superior and thereby alleged to have violated the provisions of Rule 2(l)(iii) of CCS (Conduct) Rules, l964".

The petitioner submitted his written statement denying and disputing the allegation that he

committed misconduct within the meaning of CCS(Conduct)Rule,l964. Thereafter an inquiry was conducted and on the basis of the report of the Inquiry Officer the petitioner was dismissed from service vide order dated l3.6.200l.

3. The petitioner challenged the dismissal order by filing Original Application No. 527 of 2002 before the Central Administrative Tribunal, Mumbai. The tribunal held that the penalty in the case of petitioner was totally disproportionate to the offence and accordingly the order of the respondents was quashed and set aside and the tribunal remanded the matter back to the disciplinary authority to impose any penalty other than dismissal, removal or compulsory retirement commensurate with the guilt. By order dated l2.9.2003 the respondents issued revised punishment thereby imposing punishment of reduction to his original post of Mail Man in minimum scale of Rs.2550 in the time scale of Rs.2550-55-2660-60-3200 for a period of five years with immediate effect i.e. from the date of his actual reinstatement. It was further ordered that during the period of reduction he will not earn increments of pay and

on the expiry of the period, the reduction will have the effect of postponing the future increments of his pay. The appeal preferred by the petitioner to the appellate authority was dismissed vide order dated l8.ll.2003.

4. The petitioner again approached the tribunal by filing Original Application No. 393 of 2004. The OA was dismissed in limine by the tribunal observing as under:

> "the question whether the alleged misconduct had been established or not cannot be raked up again as the same had already been settled on the earlier occasion by the tribunal. The respondents were required to reconsider the quantum of punishment alone. Through Exhibit A dated l2.9.2003, respondents have reconsidered and awarded a lower penalty to the applicant as per the directions of this court. They have not committed any irregularity in this. The ratio of the case of Ashok Ganpatrao Lacharwar would not be applicable to the present case

as the previous orders of this tribunal dated 7.8.2003 were not challenged by any one and have become final. Having regard to the discussions made above, we do not find any infirmity in the impugned orders. This OA is dismissed in limine".

5. Ms Tendulkar, learned counsel appearing for the petitioner submitted that once intimation was given by the DRI Mumbai about the detention and suspension order came to be issued question of further intimating the same did not arise. She submitted that the petitioner was arrested on 6.6.l999 and released on bail on 22.6.l999 and on the next day i.e. 23.6.l999 the petitioner attended the office and an explanation to this effect was submitted to the respondents. Therefore she submitted that the order of the respondents holding thepetitioner guilty of violation of l0(2) of the CCS Rules is totally arbitrary and perverse. She submitted that a similar case of Ashok Ganpatrao Lacharwar from the very department was considered by the tribunal in Original Application No. 506 of 2002 and the tribunal was pleased to hold that

the failure of the official to inform the office promptly cannot be held to be a case of misconduct and no charge of failure to maintain absolute integrity can be invoked against him. She also pointed out that a writ petition being Writ Petition No.l902 of 2003 filed by the department against the order of the tribunal in Lacharwar's case was dismissed by the Division Bench of this court vide order dated 29.8.2003.

6. In reply, Mrs Masurkar, learned counsel appearing for the respondents submitted that the petitioner was arrested by the DRI in connection with smuggling of watches and the custom authority has imposed a penalty of Rs.50,000 which came to be modified by the CEGAT to Rs.5000 and the petitioner has paid the penalty of Rs.5000. She submitted that it is incumbent upon the government servant who is arrested to intimate the fact of his arrest and the circumstances connected to it to the superior official promptly. Since the petitioner in the present case failed to intimate the fact of his arrest to his superiors promptly, which amounted to suppression of material information, which itself rendered him for disciplinary action on

the ground of misconduct and for which he has been held guilty by the Enquiry Officer. She submitted that the misconduct alleged against the petitioner was serious but on the direction of the tribunal punishment has been reduced i.e. reduction in the rank for the period of 5 years and therefore no interference is warranted in exercise of power under Article 226 of the Constitution.

7. We have considered the submissions advanced by the learned counsel appearing for the parties . We have also perused the record of the case. In the instant case the only charge against the petitioner was failure to maintain absolute integrity in contravention of provisions of Rule 3(l)(i) of the CCS(Conduct)Rules, l964 for the reason that the petitioner failed to intimate the fact of his arrest and the circumstances connected to it to the superior official promptly. It is an admitted position that the petitioner’s arrest was known to the department and the department as a matter of fact placed the petitioner under deemed suspension with effect from 6.6.l999. The petitioner was released on bail on 22.6.l999 and immediately on

the next day i.e 23.6.l999 he attended the office and his statement was recorded. He disclosed in his statement that he was detained in custody from 6.6.l999 till 22.6.l999. We do not see any malafides on the part of the petitioner or any suppression of fact by him. The fact of arrest by DRI and detention in police custody was made known to the authorities by DRI's letter dated 8.6.l999. In any event it was disclosed to the authorities by the petitioner himself upon his release from the police custody. Thus the act of the petitioner cannot be said to be a misconduct. The facts of the present case are identical to the case of Lacharwar and we see no reason why same reliefs should not be granted to the petitioner.

8. Mrs Masurkar, has vehemently contended that the petitioner was caught red handed by the DRI in connection with the smuggling of watches worth Rs.l.5 lacs and the custom authority has imposed a penalty of Rs.5,000 which is paid by the petitioner and therefore the case of Lacharwar cannot be compared with the petitioner. We are unable to accept this submission of the learned counsel. The charge

against the petitioner was not based on the order of the CEGAT but the only charge against him was that he suppressed the fact of his arrest from his superiors.Therefore the fact that a penalty was imposed on the petitioner by CEGAT is really not relevant for the purpose of this petition. Mrs Masurkar also submitted that the petitioner was promoted as Head Mail Peon only on adhoc basis as per the orders on the subject and posting of MG MMT on MMS Trips is required to be done from among the junior most TBOP Mailmen in the reverse order i.e. junior to senior provided the official is otherwise fit to work as MG MMT on MMT trips and no additional monetary benefit is admissible in this revised arrangement. It is not necessary for us to express any opinion on this aspect of the matter and the respondents are free to take action in accordance with law in that regard.

9. In the result petition succeeds. The order of the tribunal dated 7.8.2000 as well as the order of punishment imposed on the petitioner dated l2.9.2003 are quashed and set aside. Rule is made absolute accordingly with no order as to costs.